

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

BENJAMIN JOHN BIESE,

Petitioner,

v.

Case No. 14-C-1123

**WILLIAM POLLARD,
Warden of Waupun
Correctional Institution,**

Respondent.

DECISION AND ORDER

Pro se Petitioner Benjamin John Biese (“Biese”), currently incarcerated at Waupun Correctional Institution, filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2254, challenging his January 28, 2011, conviction by the Circuit Court for Columbia County, Wisconsin for the assault or battery of a judge. Biese has also filed a petition to proceed without payment of the filing fee. (ECF No. 4.)

Review of Biese’s inmate trust account statement establishes that he is unable to pay the \$5.00 fee for filing his petition and, as will be further discussed, his § 2254 petition states an arguable claim for relief. Therefore, the petition for leave to proceed without payment of the fee is

granted.

The Court also reviews this action pursuant Rule 4 of the Rules Governing § 2254 Cases which reads:

If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified. Otherwise the judge shall order the respondent to file an answer.

Rule 4, Rules Governing § 2254 Cases. The Court's initial review of habeas petitions requires determining whether the petitioner has set forth cognizable constitutional or federal law claims and exhausted available state remedies. Biese's petition raises arguable constitutional claims. He states that he has presented his claims to the Wisconsin Court of Appeals and unsuccessfully petitioned the Wisconsin Supreme Court for review. Since Biese's claims are not subject to summary dismissal, the Court will require Respondent William Pollard ("Pollard") to file an answer.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS
HEREBY ORDERED THAT:**

Biese's petition for leave to proceed without prepayment of costs and fees (ECF No. 4) is **GRANTED**.

Pollard **MUST FILE AN ANSWER** to Biese's petition for a writ of

habeas corpus on or before December 22, 2014; and

The answer **MUST** conform to the requirements of Rule 5 of the Rules Governing Section 2254 Cases.

Dated at Milwaukee, Wisconsin, this 20th day of October, 2014.

BY THE COURT:



HON. RUDOLPH T. RANDA
U.S. District Judge